REMARKS

Claims 1-12 are pending in the application and were rejected. In view of the following remarks, reconsideration of the application is respectfully requested.

Response to the Section 103 Rejection

Claims 1-12 were rejected under 35 U.S.C. § 103(a) as unpatentable over Applicant's Admitted Prior Art (APA) in view of Cohen (U.S. Patent No. 6,406,439). Applicant respectfully traverses this rejection on the basis that the combination of Cohen and the APA fail to teach every element of any rejected claim, and therefore a *prima facie* case of obviousness is lacking.

The rejection states that the APA teaches the elements of claims 1 and 7, except for the limitation that the carrier signal has a frequency greater than 20 kHz. The rejection then continues:

> In column 4, lines 5-7, Cohen teaches a modulated carrier signal having a frequency greater than 20 kHz. It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of the APA and Cohen for the purpose of providing an improved evoked response with stronger potentials in audiometric testing.

Applicant respectfully disagrees. Turning to the cited section of Cohen, Applicant finds no mention of a carrier signal with a frequency greater than 20 kHz:

> FIG. 17 illustrates graphs of the evoked response voltages and dB relative to one volt against the frequency of the carrier at a modulation frequency of 140 Hz. (Cohen, col. 4, ll. 5-7.)

This sentence mentions a numerical modulation frequency—more than two orders of magnitude below 20 kHz—and no specific carrier frequency. Figure 17, like Figure 16, plots an auditory test for carrier frequencies of 500 Hz, 1 kHz, 2 kHz, and 4 kHz. (Cohen, col. 8, ll. 15-60.) Applicant can find no teaching or suggestion in Cohen of a carrier frequency greater than 20 kHz.

Beyond the lack of an ultrasonic carrier teaching, the further teachings of Cohen weigh against combination with APA to suggest the additional limitations of the dependent claims. Cohen is directed to an audiometer, i.e., "an instrument for measuring hearing activity for pure tones of normally audible frequencies." *The American Heritage®*

Dictionary of the English Language, Third Edition (1996). Such a device would be pointless if it attempted to measure hearing activity for normally inaudible frequencies. Further, it is apparent from this definition, as well as Cohen's disclosure, that Cohen's device generates sound pressure waves, not an electrical signal that is applied to the cochlea. (Cohen, col. 1, ll. 10-16 (device used for diagnosis of deafness); col. 1, ll. 34-60 (repeatedly mentioning "low sound levels" for "auditory stimulus signals.") Thus nothing in Cohen suggests combination or usage in a cochlear implant, but is strictly related to hearing tests. Accordingly, a *prima facie* case of obviousness is lacking.

Conclusion

In view of the arguments presented above, Applicant respectfully requests that the claim rejection be withdrawn, and that claims 1-12 be allowed to proceed to issuance. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Customer No. 20575

Respectfully submitted,
MARGER JOHNSON & McCOLLOM, P.C.

James E. Harris
Reg. No. 40,013

MARGER JOHNSON & McCOLLOM
1030 SW Morrison Street
Portland, OR 97205
(503) 222-3613

I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile number (703) 872-9314, on July 23, 2003.

James E. Harris